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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 MICHAEL SHAWN HOULIHAN,

No. CV-07-266-LRS

9
10 Plaintiff,

**ORDER GRANTING
MOTION TO DISMISS**

11 v.

12 CITY OF LIBERTY LAKE, et al.,

13
14 Defendants.
15

16 **BEFORE THE COURT** is the Defendants' Motion To Dismiss Plaintiff's
17 State-Law Claims (Ct. Rec. 3).

18 The Plaintiff has not responded to the motion within the time allowed. A
19 failure to timely file a memorandum of points and authorities in opposition to any
20 motion may be considered as consent on the part of the party failing to file such
21 memorandum to the entry of an order adverse to the party in default. LR 7.1(h)(5).
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23 **I. BACKGROUND**

24 Plaintiff filed a complaint in Spokane County Superior Court on July 20,
25 2007 which was removed to this court on August 17, 2007 on the basis of federal
26 question jurisdiction. (Ct. Rec. 1). The complaint alleges claims under 42 U.S.C.
27 §1983, as well as common law claims under state law. Defendants seek dismissal
28 of the state law claims, asserting Plaintiff did not comply with the requirements

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under RCW 4.96.020 for properly presenting those claims to the City of Liberty Lake.

II. DISCUSSION

A. Applicable Standard

It appears Defendants' motion is pursuant to Fed. R. Civ. P. 12(b)(6) (failure to state a claim upon which relief can be granted). If on such a motion, matters outside the complaint are presented and not excluded, the motion shall be treated as one for summary judgment as provided in Fed. R. Civ. P. 56. Defendant presents an "Affidavit Of Arlene Fisher" as an attestation to when the City of Liberty Lake first received notice of Plaintiff's tort claims. (Ct. Rec. 9). Accordingly, the motion shall be treated as one for summary judgment.

The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court. *Zweig v. Hearst Corp.*, 521 F.2d 1129 (9th Cir.), *cert. denied*, 423 U.S. 1025, 96 S.Ct. 469 (1975). Under Fed. R. Civ. P. 56, a party is entitled to summary judgment where the documentary evidence produced by the parties permits only one conclusion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505 (1986); *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). Summary judgment is precluded if there exists a genuine dispute over a fact that might affect the outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248.

The moving party has the initial burden to prove that no genuine issue of material fact exists. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348 (1986). Once the moving party has carried its burden under Rule 56, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* The party opposing summary judgment must go beyond the pleadings to designate specific facts establishing a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325,

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106 S.Ct. 2548 (1986).

In ruling on a motion for summary judgment, all inferences drawn from the underlying facts must be viewed in the light most favorable to the non-movant. *Matsushita*, 475 U.S. at 587. Nonetheless, summary judgment is required against a party who fails to make a showing sufficient to establish an essential element of a claim, even if there are genuine factual disputes regarding other elements of the claim. *Celotex*, 477 U.S. at 322-23.

B. RCW 4.96.020

RCW 4.96.020 provides the procedure for presenting claims for damages against local governmental entities and their agents. It states in relevant part:

(3) All claims for damages arising out of tortious conduct must locate and describe the conduct and circumstances which brought about the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. **If the claimant is incapacitated from verifying, presenting, and filing the claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which the claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.**

(4) No action shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period.

(Emphasis added).

Plaintiff's claim for damages was first presented to and filed with the City of Liberty Lake on May 23, 2007. (Affidavit of Arlene Fisher, Ct. Rec. 9). His action was filed in Spokane County Superior Court 58 days later on July 20, 2007.

Plaintiff did not sign (“verify”) the claim himself. There is no indication the Plaintiff was incapacitated, a minor, or a nonresident of the state absent therefrom during the time within which the claim was required to be filed, such that his attorney could properly verify the claim. *Reyes v. City of Renton*, 121 Wn.App. 498, 503-04, 86 P.2d 155 (2004)(statute excepts only minors, nonresidents, or incapacitated persons from personal verification requirements for a tort action against a local governmental entity, and claimant must personally verify claim in all other circumstances). Accordingly, Plaintiff’s claim did not comply with RCW 4.96.020(3) and (4). Strict compliance is required with regard to the claim filing procedures, such as verification, in actions against governmental entities. *Reyes*, 121 Wn.App. at 502. *See also Medina v. Public Utility Dist. No. 1 v. Benton County*, 147 Wn.2d 303, 317-18, 53 P.3d 993 (2002)(strict compliance with 60-day waiting period required even though the claim had been denied prior to expiration of 60 day period).

III. CONCLUSION

There is no genuine issue of material fact that Plaintiff’s tort claim presented to and filed with the City of Liberty Lake did not comply with the requirements of RCW 4.96.020. Accordingly, Defendants’ Motion To Dismiss, converted to a motion for summary judgment, is **GRANTED**. Defendants are awarded summary judgment on the state law claims alleged in Plaintiff’s complaint.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and provide copies of it to counsel of record.

DATED this 10th day of December, 2007.

s/Lonny R. Suko

LONNY R. SUKO
United States District Judge

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